



Environmental Protection and Compliance Division (EPC-DO)

Los Alamos National Laboratory

PO Box 1663, K404

Los Alamos, New Mexico 87545

(505) 665-2014

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Mr. John E. Kieling, Chief
Hazardous Waste Bureau
New Mexico Environment Department
2905 Rodeo Park Drive East, Building 1
Santa Fe, NM 87505

Subject: Supplemental Response to December 19, 2017 Request for Information (RFI), Los Alamos National Laboratory

Dear Mr. Kieling:

Enclosed please find additional federal cases that support the privacy interest of government contractor employees and the withholding of individual employee names and contact information under Exemption 6 of the Freedom of Information Act (FOIA). This letter supplements the Laboratory's submittal of April 5, 2018, in response to a request from New Mexico Environment Department (NMED) counsel for additional supporting information.

Sincerely,

Mark P. Haagenstad,
Team Leader
Compliance Programs
Los Alamos National Laboratory



MPH/CJ: kr

Enclosure: 1) Freedom of Information Act (FOIA) Cases



Copy: John Verhuel, Assistant General Counsel, NMED, (E-File)
Silas DiRoma, NA-LA, (E-File)
Karen E. Armijo, NA-LA, (E-File)
Morgan Luckey, NA-LA, (E-File)
Deborah Woitte, LC-ESH, (E-File)
Susan McMichael, LC-ESH, (E-File)
John C. Bretzke ADESH, (E-File)
Benjamin B. Roberts, EPC-DO, (E-File)
Taunia Van Valkenburg, EPC-CP, (E-File)
John M. Tymkowych, EPC-CP, (E-File)
Paul B. Schumann, EPC-CP, (E-File)
Catherine Juarez, EPC-CP, (E-File)
Ellena I. Martinez, EPC-CP, (E-File)
adesh-records@lanl.gov, EPC-CP, (E-File)
epc-correspondence@lanl.gov, (E-File)

ENCLOSURE 1

Freedom of Information Act (FOIA) Cases

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The following cases support the validity of protecting the legitimate privacy interest of government contractor employees and the withholding of individual employee names, contact information and other identifying information appearing in federal records under Exemption 6 of the Freedom of Information Act (FOIA):

- *Dep't of State v. Washington Post Co.*, 456 U.S. 595, 599 (1982); *Prison Legal News v. Samuels*, 787 F.3d 1142, 1147 (D.C. Cir. 2015); *Brown v. Perez*, 2016 U.S. App. LEXIS 20270, 16 (10th Cir. 2016)(The purpose of Exemption 6 is to “protect individuals from injury and embarrassment that can result from the unnecessary disclosure of personal information”)
- *Reporters Committee for Freedom of the Press v. Dep't of Justice*, 489 U.S. 769, 773 (1989)(The privacy interests protected by the exemptions to FOIA are broadly construed)
- *Brown v. Perez*, 2016 U.S. App. LEXIS 20270, 18 (10th Cir. 2016)(Similar files under Exemption 6 has a broad, rather than a narrow, meaning and encompasses all information that applies to a particular individual), citing *U.S. Dep't of State v. Wash. Post Co.*, 456 U.S. 595, 600, 602 (1982). *Lepelletier v. FDIC*, 164 F.3d 37, 46 (D.C. Cir 1999)(the phrase “similar file” refers to all information that applies to a particular individual).
- *Associated Press v. Dep't of Justice*, 549 F.3d 62, 65 (2d Cir. 2008)(The release of an individual's name to the public implicates a privacy interest under the FOIA)
- *In the Matter of Carter & Burgess, Inc.*, FIA-12-0008 (DOE Office of Hearings and Appeals, April 12, 2012 (“The Appellant's allegation that there is no expectation of privacy, even by government contractor employees, is erroneous...courts have found a broad privacy interest. Therefore, NNSA correctly concluded that the contractor employees whose names appear in the documents have a legitimate expectation of privacy under the FOIA”)
- *In the Matter of Tim Hadley*, FIA-14-0045 (DOE Office of Hearings and Appeals, July 24, 2014)(holding that “Oak Ridge correctly concluded that a person who is not an employee of the federal government has a legitimate expectation of privacy under the FOIA” and further “find[ing] that the public interest in...withheld names is minimal at best”)
- *Dept. of Air Force v. Rose*, 425 U.S. 352, 372 (1975)(The public's interest in disclosure must be balanced against the individual's privacy interests); *Forest Guardians v. U.S. Fed. Emergency Mgmt. Agency*, 410 F.3d 1214, 1218 (10th Cir. 2005)(In determining whether the release of information would constitute a clearly unwarranted invasion of personal privacy, we must balance the public interest in disclosure against the privacy interest Congress intended the exemption to protect)
- *Wood v. FBI*, 432 F.3d 78, 88 (2nd Cir. 2005) (“This interest against possible harassment and embarrassment of investigative personnel raises a measurable privacy concern that must be weighed against the public's interest in disclosure”)

- *Lesar v. U.S. Dep't of Justice*, 636 F.2d 472, 487 (D.C. Cir. 1980); *Elec. Privacy Info. Ctr. v. U.S. Dep't of Homeland Sec.*, 384 F. Supp. 2d 100, 116 (D.D.C. 2005)(Pursuant to Exemption 6, individuals have a privacy interest in avoiding disclosure of identifying information if disclosure would subject them to harassment.)
- *Judicial Watch, Inc. v. Dep't of the Army*, 402 F. Supp. 2d 241, 251 (D.D.C. 2005), *recon'd on other grounds*, 466 F.Supp.2d 112 (D.D.C. 2006) (granting defendant's motion for summary judgment as to information withheld pursuant to Exemption 6; finding that it is "likely" that the documents would be published on the Internet and that media reporters would seek out employees, and stating "[t]his contact is the very type of privacy invasion that Exemption 6 is designed to prevent")
- *Hall v. DOJ*, 552 F. Supp. 2d 23, 30 (D.D.C. 2008) ("Pursuant to Exemption 6, individuals have a privacy interest in avoiding disclosure of identifying information if disclosure would subject them to harassment.")